

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

13
p15
75-1235

To be argued by
PHYLIS SKLOOT BAMBERGER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

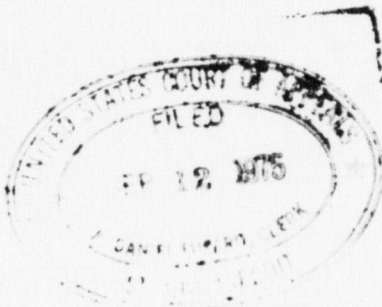
ROBERT J. ENRIGHT,

Appellant.

Docket No. 75-1235

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
ROBERT J. ENRIGHT
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PHYLIS SKLOOT BAMBERGER,
Of Counsel.

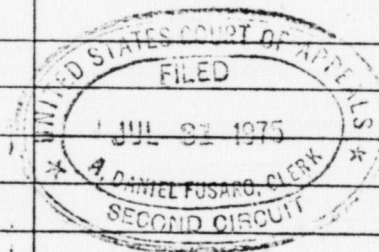
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CRIMINAL DOCKET

74 CRIM. 1152

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Jeffrey Glekel AUSA
ROBERT JOSEPH ENRIGHT 3-26-75	791-1928
	For Defendant: Gordon Lang
	299 Bdwy, NYCL
	233-1177

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(01)					
Fine,					
Clerk,					
Marshal,					
Attorney,					
COMMISSIONER'S COURT 18					
WARRANT 2113(a)(d)					
Bank Robbery.(a) (Ct.1)					
Assault during bank robbery.(d)(Ct.2)					
(Two Counts)					



DATE	PROCEEDINGS
12-10-74	Filed indictment and ordered sealed. Metzner, J.
12-18-74	Indictment ordered unsealed. Carter, J. B/W ordered.
12-18-74	Bench warrant issued.
12-24-74	Filed Affidavit for H/C AD PROSEQUENDUM returnable 12-30-74.
12-30-74	Def. produced on a Writ (atty. present) court directs a plea of not guilty be entered. 10 days for motions. Writ adjourned to 1-13-75. Griesa, J. Case assigned to Metzner, J. for all purposes.
	(over)

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
01-21-75	Filed notice that deft. is represented by: Gordon Lang 299 Bdwy, NYC 10007 233-1177		
02-11-75	Filed govts. affdt. of Jeffrey Glekel to produce deft. at this courthouse on Feb. 24, 1975. writ issued, ret. on: 2/24/75.		
02-14-75	Filed govts. affdt. of Jeffrey Glekel to produce Leo Dortort as a witness Metzner, J.		
02-27-75	Filed deft's request to charge		
02-27-75	Filed Governments request to charge		
02-24-75	Suppression hearing held and concluded. Motion denied. - Metzner, J. JURY TRIAL begun - writ continued		
02-25-75	Trial continued - writ continued		
02-26-75	Trial continued and concluded. JURY VERDICT: GUILTY on both counts. P.S.I. ordered. Sentence 3-26-75 - writ adj. to 3-26-75 - Metzner,		
02-25-75	Filed writ of H/C - returned unexecuted, deft. was transferred.		
02-20-75	Filed Governments affdvt. for a W/H/C to produce deft. - writ issued a ret. on 2-24-75.		
02-03-75	Filed w/h/c to produce deft. on Dec. 30, 1974 at this courthouse. Carter writ satisfied on 1/24/75 by J. Frankel.		
03-26-75	FILED JUDGMENT (atty. Gordon Lang, present) -- the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of TWENTY (20) YEARS on each of cts. 1 and 2, to run concurrently with each other. It is recommended that the Atty. General pursuant to Section 4062 of Title 18, USC, arrange to have this sentence served concurrently with the time due the State for the parole violation and for the escape provision, in so far as the time that can be served concurrently can be served. If the Atty. General agrees with this recommendation the balance of this sentence if any, will be served in a Federal Institution to be designated by him. (copies issued)		
4/1/75	Filed commitment & entered return, Deft. delivered to B (see Pg. 3)	a copy to Warden of Attica Council Jax + Bureau of Prisons Regional Office at P.L.I.	

D. C. 110 Rev; Civil Docket Continuation

DATE	PROCEEDINGS	Date Judge
3-16-75	Filed defts. notice of appeal to the USCA from the judgment entered March 26, 1975. (Copies mailed to the US Attys. Office) (copy mailed to deft. at 427 West St.)	c.
4/17/75	Filed govt. w/c to produce deft. on Feb 24, 1975. Went out. satisfied on 3/26/75. - [Signature]	
05-13-75	ENRIGHT--Filed letter from deft. dated May 4, 1975 re: reduction of sentence.	
05-13-75	ENRIGHT--Filed memo end. on above letter--Motion for reduction of sentence is denied. So ordered, Metzner, J. (Pro se for notices)	

A.E. Thompson
[Signature]

UNITED STATES OF AMERICA

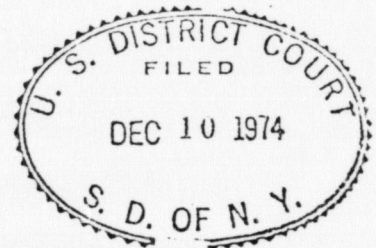
-v-

ROBERT JOSEPH ENRIGHT,

Defendant.

INDICTMENT

74 Cr.



COUNT ONE

The Grand Jury charges:

On or about the 19th day of July 1973, in the Southern District of New York, ROBERT JOSEPH ENRIGHT, the defendant, unlawfully, wilfully and knowingly, by force, violence and intimidation did take and attempt to take from the persons and presence of others, money and property in the approximate amount of \$3,500, which was then in the care, custody, control, management and possession of the National Bank of Westchester, 233 West First Street, Mount Vernon, New York which was then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a).

COUNT TWO

The Grand Jury further charges:

On or about the 19th day of July, 1973, in the Southern District of New York, ROBERT JOSEPH ENRIGHT, the defendant, unlawfully, wilfully and knowingly, in committing and attempting to commit the offense set forth in Count One herein, did assault and put in jeopardy the lives of persons by the use of dangerous weapons and devices to wit, firearms.

(Title 18, United States Code, Section 2113(d).)

Doni V. Houllo
Foreman

Paul J. Corran
PAUL J. CORRAN
United States Attorney

f

DEC 18 1973

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ct Court

W YORK

AMERICA

HT,

endant.

T

(a);

cs Attorney.

Foreman.

JUDGE [illegible]

12-10-74 Indictment returned sealed MR.

12-18-74 Ind. ordered unsealed - Metzner, J.

DEC 30 1974

Def't Produced on a Writ (atty
Larry Greenberg Present) Court directed
the entry of a plea of N/G. Case
assigned to Metzner, J. 10 days for
return. Writ adj to 1-13-75 MR
Green, J.

FEB 24 1975

Suppression hearing held and concluded.
Motion to suppress denied.

Jury impaneled and sworn trial begun.
The defendant produced in court as a witness of
H.C. and [illegible] Writ adj to 2/25/75 Metzner, J.

FEB 25 1975

Trial continued. Writ continued and
adjourned to Feb 26, 1975.
Govt. Rest.

Metzner, J.

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2 U.S.A.

3 v.

4 Enright

CHARGE OF THE COURT

(Metzner, J.)

5 THE COURT: Mrs. Barber, ladies and gentlemen
6 of the jury, we have now reached the point in this trial
7 when you are about to enter upon your final function as
8 jurors which is, of course, one of the sacred duties of
9 citizenship. You have given careful attention to the evidence
10 during the course of the trial and I am certain that you
11 will conduct your deliberations in the same fine spirit
12 that you have so far displayed and with impartiality and
13 fairness reach a just verdict in this case. In our court system
14 the functions of the judge and the functions of the jury are
15 clearly defined.

16 It is my duty to instruct you as to what the law is.
17 It is your duty to accept the law as I state it to you.
18 Just as I am the exclusive judge of the law so you are the
19 exclusive judges of the facts. You alone determine the
20 credibility of the witnesses and the weight, effect and
21 value that should be given to their testimony. It is up to
22 you to determine from the evidence you have heard what the
23 facts are in this case and from those facts decide whether
24 the defendant has violated the law.

25 This is a criminal prosecution in which the
government is one party and the defendant is the other.

1
2 The fact that the government is a party entitles it to
3 no greater and to no lesser consideration than any other
4 party. It is entitled to the same consideration as given
5 to the defendant, no more and no less. This case must be
6 decided within the scope of the charges against the defendant
7 as contained in the indictment, but before discussing
8 the law applicable to the charges of the indictment let
9 us consider some general principles which apply in every
10 criminal case.

11 An indictment itself is not evidence. It merely
12 describes the charges made against a defendant and may
13 not be considered by you as evidence of the guilt of the
14 defendant. Nor can the fact that a grand jury has found
15 this indictment in any way detract from the presumption
16 of innocence with which the law surrounds a defendant
17 unless and until his guilt is proved beyond a reasonable
18 doubt.

19 Each of the two counts which you will consider
20 alleges the commission of a separate and distinct offense.
21 It will be necessary for you to reach a verdict of guilty
22 or not guilty as to each count of the indictment. You must
23 consider and weigh the evidence separately as to each count.
24

25 The first count of the indictment charges that
on or about July 19, 1973, the defendant Robert Enright

1 unlawfully, wilfully and knowingly by force and violence
2 and by intimidation did take from the person and presence
3 of another approximately \$3,500 belonging to and in the
4 care, custody, control, management and possession of the
5 National Bank of Westchester at 233 West First Street, Mount
6 Vernon, New York, The deposits of which were then insured
7 by the Federal Deposit Insurance Company.
8

9 The second count of the indictment charges that
10 on or about July 19, 1973, the defendant Enright in taking
11 this money from the bank did assault and put in jeopardy
12 the lives of persons by the use of a dangerous weapon, to
13 wit, a firearm. The defendant has denied the charges in
14 the indictment. By his plea of not guilty the defendant has
15 put into issue every material fact alleged in the accusations
16 brought against him. Accordingly, the government having
17 made the charge has the burden of proving beyond a reasonable
18 doubt each material element of each count of the indictment.
19 This burden of proof never shifts. It remains with the
20 government throughout the entire trial and during your
21 deliberations as jurors. A defendant does not have to
22 prove his innocence. He is presumed to be innocent and
23 this presumption is overcome only when you reach a conclusion
24 from the evidence that his guilt has been established
25 beyond a reasonable doubt.

Now what is meant by a reasonable doubt? There is nothing mysterious about the term. It means as the words themselves indicate, a doubt based upon reason and common sense which arises after consideration of all the evidence. Reasonable doubt is a doubt which would cause reasonable persons to hesitate to act in matters of importance to themselves. It is not a vague, speculative, imaginary something and a person may not be convicted on mere suspicion or conjecture.

On the other hand, a reasonable doubt does not exist merely because a juror does not wish to perform an unpleasant duty. A reasonable doubt may arise not only from the evidence produced but also from the lack of evidence. A defendant may also rely upon evidence brought out on cross-examination of any of the witnesses who have testified on behalf of the government. He may attempt to raise a reasonable doubt in your mind as to the existence of one or more of the essential elements of the crime without affirmatively presenting his version of all or any of the facts. This is so because the law does not impose upon a defendant a duty to produce any evidence. The law does not compel a defendant to take the witness stand and testify and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to

1 testify. Now it is not necessary for the government to prove
2 the guilt of a defendant beyond any possible doubt. Proof
3 is usually not a matter of mathematical or absolute
4 certainty. In the nature of things it cannot be; but
5 to sustain a conviction there must be such proof as satisfies
6 your reason as intelligent people beyond any reasonable
7 doubt that the defendant is guilty as charged. If you do not
8 have a reasonable doubt of the defendant's guilt as to
9 the material elements of a charge then you should return
10 a verdict of guilty on that count.
11

12 If on the other hand you do have a reasonable
13 doubt as to the defendant's guilt as to any of the material
14 elements of the crime charged then you must return a
15 verdict of not guilty as to that count.
16

17 This trial has been a short one and you
18 have heard the summations of counsel in which they pointed
19 out the various portions of the proof on which they say
20 you should rely to render a verdict in favor of their
21 client. I see no reason to further detail the contentions
22 of the parties or the specific proof to substantiate those
23 contentions.

24 Now, let us discuss each count separately. The first
25 count of the indictment charges a violation of Section 2113(a)
of Title 18 of the United States Code which makes it a crime

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2 for anyone by force and violence or by intimidation to
3 take or attempt to take from the person or presence of another
4 any money belonging to or in the care, custody, control,
5 management or possession of any bank, the deposits of which
6 are insured by the Federal Deposit Insurance Company. To
7 convict the defendant on this count you must be convinced
8 beyond a reasonable doubt of the existence of each of the
9 four following elements:

10 First, that on or about July 19, 1973, the branch
11 of the National Bank of Westchester located at 233 West
12 First Street, Mount Vernon, was a bank the deposits of
13 which were insured by the Federal Deposit Insurance Corporation.
14 The parties have agreed that the deposits of this branch were
15 insured by the Federal Deposit Insurance Corporation.

16 Second, that on July 19, 1973, Robert Enright
17 wilfully and knowingly took money from the bank which belonged
18 to or was in the care or custody or control or management or
19 possession of that bank. You may find that the defendant
20 acted knowingly and wilfully if he acted voluntarily and
21 purposely and with specific intent to do something which
22 the law forbids. That is to say, that he must have acted
23 with evil motive or bad purpose to disobey or disregard
24 the law and not because of negligence, mistake, inadvertence
25

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2 or other innocent reason. It is obviously impossible
3 to ascertain or prove directly what a person knew or
4 intended. You cannot look into a person's mind and see
5 what his intentions were or what he knew. But a careful
6 and intelligent consideration of the facts and circumstances
7 shown by the evidence in any given case as to a person's
8 actions and statements enables us to infer with a reasonable
9 degree of certainty and accuracy what his intentions were
10 in doing or not doing certain things and the state of his
11 knowledge.

12 Third, you must find beyond a reasonable doubt
13 that the money was taken from persons or in the presence of
14 one or more persons other than Enright. Fourth, that
15 Enright accomplished the second and third elements by force
16 or violence or by intimidation.

17 We all know what is meant by force and violence
18 but the word intimidation, as it is used here, needs a
19 little explaining. Intimidation means such words or conduct
20 which would generate fear in a reasonable person. It is not
21 required that the employees of the bank were actually put
22 in fear by the defendant's conduct. The important question
23 is whether a reasonable person would have been put in fear
24 by such conduct.
25

Coming now to the second count of the indictment which charges a violation of Section 2113(d) of Title 18 of the United States Code, this section makes it a separate and distinct crime to commit the offense charged in count 1, which I have just discussed, if during the commission of that offense the defendant assaulted any person or put in jeopardy the life of any person by use of a firearm. To convict the defendant under this count you must not only find beyond a reasonable doubt that he is guilty under count 1 but you must also find beyond a reasonable doubt that in the course of committing the offense charged in count 1 the defendant assaulted one or more persons or put in jeopardy the lives of one or more persons by the use of a firearm.

It is not essential, to convict under this count, that you find both an assault and an endangering of lives by use of a firearm. It is essential, however, that you find either one or the other. In terms of the problems you have, the flourishing or pointing of a loaded pistol or gun at another person for the purpose of putting that person in fear is sufficient to constitute an assault. It is also sufficient to sustain the finding by you that one or more lives were put in jeopardy by use of a firearm. You must find beyond a reasonable doubt that the defendant carried

1 a firearm which was drawn and loaded. There has been no
2 proof in this case that the gun was loaded at the time
3 of the robbery. However, if you find that a gun was used
4 you may, if you desire, infer from such fact that the gun
5 was loaded and capable of inflicting deadly injury by the
6 one who employed it.
7

8 In determining the guilt or innocence of a
9 defendant you must decide that question solely from the
10 evidence you heard from the witness stand and the exhibits
11 that have been placed before you. The summations of counsel
12 which you heard are not to be considered as evidence but
13 only as arguments to you as to what counsel feel you should
14 find from the evidence. Statements made by counsel in
15 arguing the admissibility of proposed evidence and colloquies
16 between the court and counsel with respect to the admission
17 or rejection of such evidence are not evidence and are not
18 to be considered by you in your deliberations.
19

20 In determining the issues in this case it is your
21 recollection of the testimony that is to control and not
22 that of the counsel or court. If during the course of the
23 trial the court sustained an objection by one counsel to
24 a question asked by the examining counsel you are to
25 disregard the question and any alleged facts contained in
the question and you may not speculate as to what the answer

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2 would have been. There are generally speaking two types
3 of evidence from which a jury may properly find the truth
4 as to the facts of the case.

5 One is direct evidence as the testimony of
6 an eye-witness. The other is indirect or circumstantial
7 evidence which is the proof of a chain of circumstances
8 pointing to the existence of non-existence of certain facts.

9 Circumstantial evidence is the proof of facts
10 from which you may reasonably infer a material element of
11 the crime. Let us take a simple example to illustrate what
12 is meant by circumstantial evidence. We will assume that
13 when you entered the courthouse this morning the sun was
14 shining brightly outside, it was a clear day. There was no
15 rain. Now assume that in this courtroom the blinds are
16 drawn and the drapes are drawn so that you cannot look outside.

17 Assume as you are sitting in this jury box and
18 despite the fact that it was dry when you entered the building
19 someone walks in with an umbrella dripping water followed in a
20 short time by a person wearing a raincoat which is set.
21 If you are asked whether it is raining now you cannot say
22 that you know it directly of your own observation. But
23 certainly upon the combination of facts which I
24 have stated to you, even though when you
25

2 entered the building it was not raining outside, it would be
3 reasonable and logical for you to conclude that it is raining
4 now. That is about all there is to circumstantial evidence.

5 You may draw such inferences as reason and
6 common sense lead you to draw from the facts which you find
7 to have been proven. Great care must be exercised when
8 drawing inferences from circumstances proved in criminal
9 cases and mere suspicions will not warrant a conviction.
10 However, no greater degree of certainty is required of
11 circumstantial evidence than is required of direct evidence.
12 It is not on any different or lower plane than direct
13 evidence.

14 The law simply requires that in either case
15 you must be convinced beyond a reasonable doubt of the guilt
16 of a defendant. In your search for the truth you must use
17 plain, everyday common sense. You must not be governed
18 by sympathy, bias or prejudice. You have seen the witnesses
19 on the stand and observed their manner of giving testimony.
20 How did the witnesses impress you? Did they appear to be
21 testifying frankly, candidly and fairly? In determining
22 what degree of credit you should give a witness' testimony
23 you may consider his conduct, his manner of testifying
24 and his interest in the outcome of the trial. You should
25

1
2 also consider his relationship to the government or the
3 defendant, his bias or impartiality and any motive he
4 may have to testify falsely. It does not necessarily follow,
5 of course, that because a person is interested in the result
6 he is incapable of telling a truthful version of an
7 occurrence.

8 If you believe that a witness wilfully testified
9 falsely as to any material fact you may disregard his
10 testimony altogether or you may accept that part of his
11 testimony which you believe worthy of credence. What you
12 accept or reject as credible evidence is for you to determine.
13 But you may not go outside the evidence to speculate as
14 to the facts. The quality of the testimony of the particular
15 witnesses regardless of who calls them rather than the
16 quantity of witnesses is the test to be used in arriving
17 at your conclusion. There is no presumption that the
18 witnesses for the government are more or less truthful or
19 credible than the witnesses for the defendant.

20 You have heard the testimony of a fingerprint
21 expert called on behalf of the government. How do you as
22 laymen determine the facts from expert testimony? You are
23 to act in exactly the same way that you would appraise
24 and determine the credibility of an ordinary witness
25 as I have already outlined for you. Ordinary witnesses are

1 allowed to tell you only what they see, hear or experience.
2
3 An expert such as this fingerprint analyst is also permitted
4 to tell you his opinions by reason of his training and
5 knowledge in his particular field. As you well know an
6 opinion is something a witness forms in his own mind based
7 on specific facts from which, using his judgment, training
8 and experience he draws certain conclusions.

9 Of course, if you don't believe the facts which
10 form the basis of the expert's opinion then his opinion
11 is valueless, but otherwise you will treat an expert's
12 opinion as evidence which you have heard. You may accept
13 it or you may reject it - in whole or in part - and it is
14 entirely up to you as to what you will do with his testimony
15 and what credibility you will give to it.

16 Evidence that a witness has been convicted of
17 a crime may only be considered by you in assessing his
18 credibility as a witness and the weight that you will give
19 to his testimony.

20 You should consider a witness' entire testimony,
21 his direct examination, his cross examination and his redirect
22 examination. You should consider the strength and weakness
23 of his recollection in the light of all the testimony and
24 attendant circumstances in the case. Inconsistencies or
25 discrepancies in the testimony of a witness or between the

1 testimony of different witnesses may or may not cause
2 you to discredit such testimony. Two or more persons
3 witnessing an incident or a transaction may see or hear
4 it differently.
5

6 Innocent misrecollection, like failure of
7 recollection is not an unusual experience. In weighing the
8 effect of a discrepancy consider whether it pertains to
9 a matter of importance or to an unimportant detail and
10 whether the discrepancy results from innocent error or
11 wilful falsehood.

12 You may call for any exhibits which you desire
13 to see in conjunction with your deliberations. You may
14 call for reading of any portion of the official transcript
15 of the evidence or any portion of this charge. You are
16 instructed that the question of possible punishment of a
17 defendant in the event of conviction is no concern of the jury
18 and should not in any sense enter into or influence your deli-
19 berations.

20 The duty of imposing sentence in the event of
21 conviction rests exclusively upon the court. The function
22 of the jury is to weigh the evidence in the case and de-
23 termine the guilt or innocence of a defendant solely upon
24 the basis of such evidence. I have sought to avoid any
25 comments which might suggest that I have personal views
on the evidence or that I have any opinion as to the guilt

1 or innocence of the defendant, and you are not to assume
2 that I have any such views or opinion. This charge is
3 given to you solely to instruct you as to the law applicable
4 to the case. The actions of the judge during the trial
5 in granting or denying motions or ruling on objections
6 by counsel or in statements to counsel or in attempting
7 to clearly set forth the law in these instructions are not
8 to be taken by you as any indication of any determination
9 of the issues of fact. These matters, the actions of the
10 court, relate to procedure and law. You, the members of
11 the jury, determine the facts.

12
13 There are 12 members of this jury and all of
14 you must agree upon any verdict you reach as to any count
15 in the indictment. This case is obviously an important one
16 to the defendant. It is equally important to the government.
17 I am submitting it to you in complete confidence that you
18 will comply with your oath as jurors and decide the case
19 fairly and impartially and without fear or favor. If
20 there are any exceptions to the charge I will take them
21 in the robing room, Mr. Glekel.

22 MR. GLEKEL: No exceptions.

23 MR. LANG: Yes, your Honor.

24 (Robing room conference.)

25 MR. LANG: Request number 11, we asked about the

weight of evidence in that the number of witnesses and the amount of testimony on one side or the other should not be taken. They could accept with equal value the testimony of a limited number of witnesses.

THE COURT: I covered that in my charge. I said the quality not the number of witnesses is what counts.

MR. LANG: I wish to except to your Honor's charge as to circumstantial evidence and the charge as to the second count that the inference can be drawn by the jury that the gun was loaded.

THE COURT: That is the Marshall case decision by Judge Lumbard in the Second Circuit.

MR. LANG: One more thing, Judge. Perhaps maybe I missed it but did you advise the jury that if they were to find him not guilty of the first count they need not consider the second count at all?

THE COURT: No, I did not. I said they could only consider the second count if they found him guilty of the first count.

(In open court.)

THE COURT: Swear the marshals.

(Marshal sworn.)

THE COURT: Mrs. Barber, you and the jury may follow the marshal into the jury room. You may eat your

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lunch first.

Mr. Van, unfortunately, you can't join the jurors at this time. You are to report back to room 109.

Do you have anything in the jury room?

MR. VAN: Yes, I have a coat.

THE COURT: Please go in and get it first before the jury goes in.

MR. VAN: Sure.

(At 12:47 the jury left the courtroom to commence their deliberations.)

MR. GLEKEL: Your Honor, at some point I would like to read the 3500 material I turned over during the course of the trial into the record by exhibit numbers.

THE COURT: You may do it now. You don't need me for that and I assume if the jury sends for any of the exhibits that you and Mr. Lang can agree on them.

MR. LANG: Can we have lunch?

THE COURT: Sure you can go for lunch but Mr. Glekel wants to read into the record the 3500 material he turned over to you.

MR. GLEKEL: Exhibit 3501, witness Meisels, one page. 3502, Bell, one page. 3503, Mulet, two pages. 3504, Lockhart, two pages. 3506, Grant, two pages. 3507, Hanchard, one page. 3508, Hanchard, one page. 3509, Hanchard, one page. 3510, Hanchard, three pages. 3511, Wisnovsky, two pages. 3512, Sherman, one page. 3513, Sherman, one page. 3515, Vincenza Staiger, grand jury December 31, 1974, Southern District, three pages. 3516, Vincenza Staiger grand jury Eastern District, December 17, '74, five pages. 3517, Ralph Staiger, grand jury SDNY, December 3, '74, 37 pages. 3518, again Ralph Staiger, January 30, 1975, grand jury Southern District of New York, five pages. 3519, Ralph Staiger, Eastern District grand jury, December 12, '74, 42 pages. 3520, Eastern District grand jury December 17, '74,

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2 33 pages. 3521, Eastern District grand jury, December 17,
3 '74, nine pages. 3522, Eastern District grand jury,
4 December 12, '74, 12 pages. 3523, grand jury Eastern
5 District entitled U.S. v. Ralph Staiger, Robert Enright,
6 nine pages. 3524 is the same thing as 3523 but three pages
7 of the grand jury. 3525, Ralph Staiger interview of
8 October 7, 1974, 12 pages. 3526 is a Ralph Staiger interview
9 of October 22, '74, seven pages. 3527, interview of
10 October 26, '74, 14 pages. 3528, interview of October 31,
11 '74, three pages. 3529, interview of October 29, '74,
12 three pages. 3530, interview of November 4, '74, seven
13 pages. 3531, interview of 11/4/74, two pages. 3532 is an
14 interview of 11/4/74, two pages. 3533 interview of 11/4/74,
15 two pages. 3534 interview of 11/4/74, two pages. 3535,
16 interview of November 4, '74, two pages. 3536, interview
17 of 11/4/74, two pages. 3537, interview of February 11, 1975,
18 two pages. 3538, interview of January 14, '75, two pages.
19 3539, interview of January 20, '75, two pages. 3540,
20 interview of January 2, '75, five pages. 3541, interview of
21 November 12, '74, one page. 3542, two pages is Ralph
22 Staiger's rap sheet. 3543 is a one page memo to file by
23 Jeffrey Glekel.

24 (Luncheon recess)
25

(At 2 P.M. a note was received from the jury.)

(Court Exhibit 1 marked.)

THE COURT: Jurors request pictures of bank holdup, two, the hat, three, the bottle, four, the handkerchief and all fingerprint cards large and small and five, line-up pictures. Six, witnesses' statements.

THE CLERK: In response to number 6 "There are no witnesses' statements in evidence."

(Court Exhibit 2 marked.)

(At 3:35 P.M. a note was received from the jury.)

THE COURT: Jurors request Mrs. Hanchard's statement read to them and Mr. Enright's profile picture.

(Court Exhibit 3 marked.)

(Note being sent in to the jury: "Mrs. Barber, we have no written statement of Mrs. Hanchard. Do you wish any testimony read to you and if so specify.")

(Court Exhibit 4 marked.)

(Robing room conference.)

THE COURT: The jury has asked to have Mrs. Hanchard's testimony read. Their first inquiry was they want Mrs. Hanchard's statement read to us and secondly, they requested Enright's profile, small picture, which I assume was Defendant's Exhibit A.

MR. GLEKEL: Yes, your Honor.

1
2 THE COURT: The clerk I assume told you of this
3 request.

4 MR. GLEKEL: Yes.

5 THE COURT: You know we sent back a note saying
6 that we have no written statement of Mrs. Hanchard. If
7 you wish any testimony read to you please specify. They
8 came back and they say they want her testimony read. We
9 can maybe narrow it down when they come into the jury box.
10 Also is there any way of getting a picture of King. King
11 was never identified before them.

12 MR. LANG: No, he was not.

13 THE COURT: I gather there really was not a picture
14 of King shown to them in the group of pictures that the
15 defendant introduced in evidence.

16 MR. GLEKEL: I can take a look to make sure
17 King's name isn't written on the back of them.

18 MR. LANG: I have looked.

19 THE COURT: So we don't have a picture of King.

20 (In open court.)

21 (At 4:05 P.M. the jury returned to the courtroom.)

22 THE COURT: Mrs. Barber, ladies and gentlemen of
23 the jury, we have several communications from you. The
24 first one read Mrs. Hanchard's statement read to us and also
25 the furnishing of Mr. Enright's profile, small picture.

1 I understand that picture has been sent to you which was
2 Defendant's Exhibit A. As the note to you indicated there
3 is no written statement by Mrs. Hanchard. There is no written
4 statement by her in evidence here. I gather you told the
5 marshal you want to hear her entire testimony reread, both
6 the direct and the cross examination?
7

8 MRS. BARBER: No, not the entire.

9 THE COURT: If you do me a favor and go back and
10 tell me exactly what you want we can pick it out and read
11 it to you. Don't discuss it in front of us here. Just
12 come back. If you want to you can write it on another piece
13 of paper. If you specify the general area of her testimony
14 that you want reread we can pick it out and read it to you.

15 (At 4:07 P.M. the jury resumed their deliberations.)

16 MR. GLEKEL: Are you going to respond to the request
17 for King's picture?

18 THE COURT: Absolutely.

19 (At the bench.)

20 THE COURT: I don't know how long it is going to
21 take after the testimony is read to them but it's been my
22 practice to tell a jury that if they don't think they can
23 reach a verdict by 5:30 that I will send them home to
24 return the next day to deliberate. We don't have adequate
25 facilities to take people home at night and I don't like

to risk the riding of people in the subway at 9, 10, 11 o'clock at night. So that after they have specified what they would like to hear and after we have read to them that portion that they want I will make that announcement to them and tell them to let the marshal know whether they can reach a verdict by 5:30 or do they wish to be excused at 5:30 to return tomorrow morning at 10 o'clock.

MR. LANG: There is no sequestering?

THE COURT: I don't sequester juries in criminal cases, lock them up overnight unless there is a serious question of possible physical harm to them. I send juries home at night. I used to keep them for dinner and send them home at 10 o'clock but the subways as they are today I don't do that any more. I keep them and let them go home at the end of the regular day and they come back the next day.

(At 4:15 a note was received from the jury.)

(At 4:36 the jury returned to the courtroom.)

THE COURT: Mrs. Barber, you have sent a communication to the court specifying the portions of Mrs. Hanchard's testimony that you wish read to the jury. It reads as follows: Mr. Enright's description given by Mrs. Hanchard of clothing and detail. Time of the car parked in front of her house and what happened after she got into her house.

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The court reporter and counsel have picked out relevant portions and Mr. Quinones will now read it to you.

(Carol Hanchard's testimony was read at this point.)

THE COURT: That is the testimony of Mrs. Hanchard. You may return to deliberate.

(At 4:45 P.M. the jury went out to resume their deliberations.)

Certificate of Service

September 12 , 19 75

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York and to appellant.

Sheila Ginsteny